

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Kent Garvey, on behalf of himself and all  
others similarly situated,

Plaintiff(s),

James Arkoosh, Samuel Belzberg, Peter Klein  
and Diomed Holdings, Inc.,

Defendants.

Master File No. 1:04-cv-10438-RGS

Honorable Richard G. Stearns

MOTION TO ENLARGE TIME TO SERVE  
SUMMONS AND COMPLAINT  
PURSUANT TO F.R.C.P 6(b), F.R.C.P. 4(m)  
AND LOCAL RULE 4.1 AND TO FILE  
THIS MOTION ONE-DAY LATE

Class Action

Pursuant to F.R.C.P 6(b), F.R.C.P. 4(m) and Local Rule 4.1, Kent Garvey, by and through undersigned counsel moves this Court for an order enlarging the time for Plaintiff to serve a summons and complaint upon defendants Samuel Belzberg and James Arkoosh an additional ninety (90) days. In addition, undersigned counsel moves this Court to permit him to file this motion one-day late pursuant F.R.C.P. 6(b).

In support of this Motion, Movant submits: (1) the Affidavit of Laurence M. Rosen dated July 1, 2004 (Exhibit "A"); (2) Affidavit of Scott P. Lopez dated July 2, 2004 ("Exhibit "B"); (3) Memorandum of Law dated July 1, 2004 (filed separately), and (3) Stipulated Order Consolidating Related Actions, Appointing Lead Plaintiff and Approving Lead Plaintiffs' Selection of Counsel ("Exhibit "C").

WHEREFORE, Kent Garvey, by and through undersigned counsel, respectfully requests that this Court grant this motion and entered the Stipulated Order filed herewith.

DATED: July 2, 2004

LAW OFFICE OF SCOTT P. LOPEZ

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Proposed Lead Counsel for Plaintiffs

## EXHIBIT “A”

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Kent Garvey, on behalf of himself and all  
others similarly situated,

Plaintiff(s),

James Arkoosh, Samuel Belzberg, Peter Klein  
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Defendants.

Master File No. 1:04-cv-10438-RGS

Honorable Richard G. Stearns

AFFIDAVIT OF LAURENCE ROSEN, ESQ.  
IN SUPPORT OF MOTION TO ENLARGE  
TIME TO SERVE SUMMONS AND  
COMPLAINT PURSUANT TO F.R.C.P. 6(b),  
F.R.C.P. 4(m) AND LOCAL RULE 4.1

Class Action

I, Laurence M. Rosen, hereby declare:

1. I am a member of The Rosen Law Firm P.A., proposed Lead Counsel in this action. I make this declaration in support of Kent Garvey's motion for extension of time to serve the summons and complaint upon defendants James Arkoosh ("Arkoosh") and Samuel Belzberg (Belzberg").
2. On May 18, 2004 Plaintiffs delivered a request for waiver of service of process together with a copy of the summons and complaint to the general counsel of Defendant Diomed Holdings, Inc. as permitted by F.R.C.P. 4(d).
3. On June 17, 2004, David B. Swank, Chief Financial Officer for Diomed, Inc. returned a signed waiver of service of process on behalf of defendants Diomed Holdings, Inc. and Peter Klein to Attorney Scott P. Lopez. However, Mr. Swank refused to accept service of process for defendants Arkoosh and Belzberg because these two defendants no longer were associated with the company.

4. I have searched the Securities and Exchange Commission EDGAR database which indicates that defendant Belzberg maintains an office address in Vancouver, British Columbia, Canada and that defendant Arkoosh maintains an office address in the Cayman Islands.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2004, at New York, New York.

/S/  
Laurence M. Rosen, Esq.

## EXHIBIT “B”

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Kent Garvey, on behalf of himself and all  
others similarly situated,

Plaintiff(s),

James Arkoosh, Samuel Belzberg, Peter Klein  
and Diomed Holdings, Inc.,

Defendants.

Master File No. 1:04-cv-10438-RGS

Honorable Richard G. Stearns

AFFIDAVIT OF SCOTT P. LOPEZ IN  
SUPPORT OF MOTION TO ENLARGE  
TIME TO SERVE SUMMONS AND  
COMPLAINT PURSUANT TO F.R.C.P. 6(b),  
F.R.C.P. 4(m) AND LOCAL RULE 4.1

Class Action

I, Scott P. Lopez, hereby declare:

5. I am a member of The Law Office of Scott P. Lopez. I make this declaration in support of Kent Garvey's motion for extension of time to serve the summons and complaint upon defendants James Arkoosh ("Arkoosh") and Samuel Belzberg (Belzberg").

6. On May 18, 2004 Plaintiffs delivered a request for waiver of service of process together with a copy of the summons and complaint to the general counsel of Defendant Diomed Holdings, Inc. as permitted by F.R.C.P. 4(d).

7. On June 17, 2004, David B. Swank, Chief Financial Officer for Diomed, Inc. returned a signed waiver of service of process on behalf of defendants Diomed Holdings, Inc. and Peter Klein. However, Mr. Swank refused to accept service of process for defendants Arkoosh and Belzberg because these two defendants no longer were associated with the company.

8. Due to other pressing commitments, namely the preparation for an evidentiary hearing on defendants motions to suppress before the Honorable Nancy Gertner in *United States vs. Martineau*, Criminal Number 03-10298-NG today, I was unable to file the accompanying papers yesterday. Moreover, undersigned counsel failure to file said materials was not due to any fault of either plaintiff or lead counsel, Laurence Rosen. Accordingly, I would respectfully request that the Court extend the time file the accompanying motion to enlarge time to serve the Summons and Complaint upon defendants James Arkoosh (“Arkoosh”) and Samuel Belzberg (Belzberg”) for a period of one day.

I declare under the penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_/S/\_\_\_\_\_  
Scott P. Lopez



## EXHIBIT “C”

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Kent Garvey, on behalf of himself and all  
others similarly situated,

Plaintiff(s),

James Arkoosh, Samuel Belzberg, Peter Klein  
and Diomed Holdings, Inc.,

Defendants.

Master File No. 1:04-cv-10438-RGS

Honorable Richard G. Stearns

**PROPOSED STIPULATED ORDER  
CONSOLIDATING RELATED ACTIONS,  
APPOINTING LEAD PLAINTIFF AND  
APPROVING LEAD PLAINTIFFS'  
SELECTION OF COUNSEL**

**CLASS ACTION**

**PROPOSED STIPULATED ORDER**

The Rosen Law Firm P.A. and the Law Office of Scott P. Lopez, having  
filed a motion for Consolidation of the Related Actions, Appointment of Lead Plaintiffs,  
and for Approval of Lead Plaintiffs' Selection of Lead Counsel on behalf of Plaintiffs  
Kent Garvey, Albert Overhauser, James T. Marsh, Roger E. Buck, and Thomas Loveless  
in the above-captioned action; and

Plaintiffs having filed a motion for extension of time to serve the  
summons and complaint upon James Arkoosh and Samuel Belzberg who are believed to  
be resident outside of the United States; and

Counsel for Diomed Holdings, Inc. and Peter Klein not having any  
opposition to such motion; and

The Parties seek to arrange an efficient schedule for the filing of planned  
responses to the Amended Complaint to avoid piecemeal adjudication of planned motions  
to dismiss; and

The Court having considered the undersigned counsel' motion for Consolidation of the Related Actions, Appointment of Lead Plaintiffs, and for Approval of Lead Plaintiffs' Selection of Lead Counsel, and the Memoranda of Law submitted in support thereof; and

The declaration of counsel submitted to the Court having shown that Plaintiffs Kent Garvey, Albert Overhauser, James T. Marsh, Roger E. Buck, and Thomas Loveless have suffered the largest monetary loss of all the proposed lead plaintiffs before the Court and are therefore the most adequate lead plaintiffs in accordance with Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "1934 Act"), 15 U.S.C. § 78u-4(a)(3)(B), and Section 27(a)(3)(B) of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(3)(B);

It is hereby ordered as follows:

1. The above-captioned action and any actions hereafter consolidated shall be collectively referred to as "In re Diomed Holdings, Inc. Securities Litigation," Master File No. \_\_\_\_\_.

2. Any other civil actions now pending or hereafter filed in this district which arise out of the same facts and claims as alleged in these consolidated actions shall be consolidated with this action for all purposes if, as, and when the Court is apprised of them. The parties shall notify the Court of any other action which is pending or filed outside of this district which may be related to the subject matter of these consolidated actions if and when they become aware of such actions.

3. Pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the "1934 Act"), 15 U.S.C. § 78u-4(a)(3)(B) and Section 27(a)(3)(B) of the

1933 Act, 15 U.S.C. § 77z-1(a)(3)(B), Plaintiffs Kent Garvey, Albert Overhauser, James T. Marsh, Roger E. Buck, and Thomas Loveless are appointed Lead Plaintiffs for the Class.

2. Lead Plaintiffs' selection of Lead Counsel is approved pursuant to Section 21D(a)(3)(B)(v) of the 1934 Act, 15 U.S.C. § 78u-4(a)(3)(B)(v) and Section 27(a)(3)(B)(v) of the 1933 Act, 15 U.S.C. § 77-1(a)(3)(B)(v). The Rosen Law Firm P.A. is appointed as Lead Counsel and the Law Office of Scott P. Lopez is appointed as Liaison Counsel.

3. Lead Plaintiffs shall file a consolidated amended complaint no later than 45 days from the date of the entry of this Order.

4. The defendants shall have until the later of: (i) 45 days after the filing and service of the consolidated amended complaint upon counsel for Diomed Holdings, Inc. and Peter Klein, or (ii) 30 days after service of a summons and complaint upon James Arkoosh and Samuel Belzberg has been effected. In any event, Diomed Holdings, Inc. and Peter Klein shall respond to the consolidated amended complaint no later than 120 days from the date of entry of this stipulated order.

5. Lead Plaintiffs shall have 30 days after service of any motion to dismiss to file and serve opposition papers thereto.

6. Defendants shall then have fifteen (15) days to file and serve a reply memorandum of law in support of any motion to dismiss the consolidated amended complaint filed by defendants.

IT IS SO ORDERED this \_\_\_day of \_\_\_\_\_, 2004:

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Richard G. Stearns, United States District Judge

**STIPULATED AND AGREED TO BY COUNSEL:**

LAW OFFICE OF SCOTT P. LOPEZ

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Proposed Lead Counsel for Plaintiffs

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